

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

LEO MUHAMMAD,)
Petitioner,)
vs.) Case No. 4:08 CV 1709 CDP
UNITED STATES OF AMERICA,)
Respondent.)

MEMORANDUM AND ORDER

Petitioner again moves for reconsideration of my denial of a certificate of appealability in this closed case. I denied petitioner's § 2255 motion on July 28, 2010. The Eighth Circuit Court of Appeals denied petitioner a certificate of appealability and dismissed his appeal on March 3, 2011. The appellate court then denied petitioner's motion for rehearing and issued the mandate on April 27, 2011. Petitioner moved for a certificate of appealability on June 26, 2013. Because there was nothing to appeal in the closed case, I denied the certificate of appealability. I also construed petitioner's motion liberally as one for relief from judgment under Federal Rule of Civil Procedure 60 and denied it, as the motion demonstrated no grounds for relief. Petitioner appealed that ruling, and the Court of Appeals denied a certificate of appealability on January 31, 2014. It also denied the petition for rehearing en banc on the same date. The mandate issued on February

11, 2014. Petitioner argues he is entitled to relief under the United States Supreme Court's decision in Alleyne v. United States, -- U.S. --, 133 S. Ct. 2151 (2013).

Alleyne does not apply retroactively to collateral proceedings such as this one.

See e.g. Simpson v. United States, 721 F.3d 875, 876 (7th Cir. 2013); United States v. Miller, 2014 WL 2768632, *8 -9 (W.D. Ark. June 17, 2014); Aragon-Hernandez v. United States, 2014 WL 468266, *3 (D. Minn. Feb. 6, 2014).

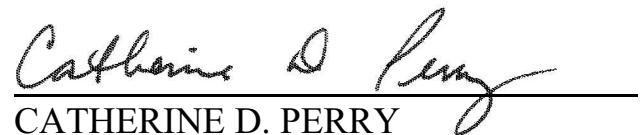
Because petitioner's current motion does not convince me that my prior decision was in error, the motion for reconsideration will be denied.

As petitioner has not made a substantial showing of the denial of a federal constitutional right, this Court will not issue a certificate of appealability. See Cox v. Norris, 133 F.3d 565, 569 (8th Cir. 1997) (citing Flieger v. Delo, 16 F.3d 878, 882-83 (8th Cir. 1994)) (substantial showing must be debatable among reasonable jurists, reasonably subject to a different outcome on appeal or otherwise deserving of further proceedings).

Accordingly,

IT IS HEREBY ORDERED that petitioner's motion for reconsideration [#42] is denied.

IT IS FURTHER ORDERED that this Court will not issue a certificate of appealability, as petitioner has not made a substantial showing of the denial of a federal constitutional right.



Catherine D. Perry
CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 23rd day of June, 2014.